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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 481

SAFEWAY STORES, INCORPORATED,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF.

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November 9, 1943.

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PETITION.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition of Safeway Stores, Incorporated, respectfully submits to this Honorable Court the following:

A.

STATEMENT OF MATTER INVOLVED.

Petitioner filed a protest against each of three different regulations issued by the respondent Price Administrator. (Record, pages 2, 10, 17.)

Under Section 203 (a) of the Emergency Price Control Act of 1942, 50 U. S. C. A. App. § 923 (a), 56 Stat. 31, the Administrator is directed to "grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith", and is required to do so "within a reasonable time" after the filing of the protest, but "in no event more than thirty days after such filing or ninety days after the issuance of the regulation" protested, "whichever occurs later".

The statutory period within which the Administrator was *required* to take one of the four above-mentioned actions expired on August 12, 1943, with respect to the first two protests, and on August 23rd with respect to the third protest. (R. pp. 3, 10, 18.)

In none of these cases did the Administrator, within the periods provided, take any of the actions required of him by the statute. Petitioner contends that the failure and refusal of the Administrator to act in accordance with law were arbitrary and capricious and constituted, in fact and in contemplation of law, a denial of the protests.

In the first case petitioner filed a complaint (R. 1) in the United States Emergency Court of Appeals on August 27, 1943, pursuant to Section 204 (a) of the Act, 50 U. S. C. A. App. § 924 (a), 56 Stat. 31, and it was assigned Docket No. 80. In the second case a complaint (Docket No. 82, R. 8), was filed on September 4, 1943, and in the third case a complaint (Docket No. 84, R. 15), was filed on September 9, 1943. Each complaint was filed within the 30-day statutory period provided therefor.

The Price Administrator moved to dismiss each complaint (R. 6, 14, 21) for lack of jurisdiction on the ground that, while admittedly he had not taken any of the required actions within the statutory periods specified, a complaint

will not lie until he has taken positive action denying the protests in whole or in part (R. 24). The Emergency Court granted the motions and dismissed the complaints. (R. 22.)

B.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, 50 U. S. C. A. App. § 924 (d), 56 Stat. 31. The Emergency Court dismissed the complaints herein by judgment entered on October 12, 1943. (R. 22.)

C.

QUESTION PRESENTED.

The sole question presented is whether the failure and refusal of the Price Administrator to take, within the statutory limitation period provided, any one of the specified mandatory steps which he is directed to take by Section 203 (a) of the Emergency Price Control Act, constitute a denial of the protest involved within the contemplation of Section 204 (a) so as to afford the protestant the right to file a complaint in the Emergency Court of Appeals. (The Emergency Court held (R. 26) that "the protest must have been actually denied by an overt act of the Administrator.")

D.

REASONS FOR THE ALLOWANCE OF THE WRIT.

1. *The Emergency Court of Appeals has decided a substantial question of federal law of general importance which has not been, but should be, settled by this Court.* There is here presented to this Court for the first time a question involving the mandatory procedural provisions of Section

203 (a) and the review provisions of Section 204 (a) of the Emergency Price Control Act of 1942. The decision of the Emergency Court sanctions a wilful disregard by the Administrator of the mandatory provisions of the Act and thus makes a mockery of the review provisions. Speedy determination of protests by the Administrator and prompt judicial review are required by the Act. The Emergency Court is given exclusive jurisdiction, subject only to review by this Court. Interim relief is specifically withheld by Sections 204 (c) and (d), although a protestant's business may be in grave jeopardy under the regulation involved.

2. *The Emergency Court of Appeals has construed the Emergency Price Control Act of 1942 in such a way as to make its operation violative of the Fifth Amendment to the Constitution of the United States.* The decision of the Emergency Court deprives petitioner of its property without due process of law. Even though the regulation be highly confiscatory it may not be enjoined or its operation suspended by any court; it may only be set aside upon final consideration by the Emergency Court or, upon review, by this Court. Thus, by dilatory tactics (such as the Administrator admits he employed in this case), contrary to the express mandate of the Act but sanctioned by the Emergency Court, the Administrator may cause immeasurable and irreparable loss to a protestant, even to such an extent as to put him out of business. And, regardless of the loss incurred before relief is obtained, there is no provision whereby a protestant may be made whole. Such deprivation of property without due process of law is in violation of the Fifth Amendment to the Constitution of the United States.

3. *The Emergency Court of Appeals has failed to give proper effect to applicable decisions of this Court relating to statutory construction.* The decision herein construes

the Emergency Price Control Act in such a way as to lead to absurd results and seriously to impair its effectiveness by eliminating, or unduly restricting and hampering, the review provisions. Such a construction is contrary to the rules of statutory construction enunciated by this Court and may and should be avoided by considering the purpose of the Act to provide *speedy* judicial review.

WHEREFORE, petitioner prays that a writ of certiorari be issued to review the judgment of the United States Emergency Court of Appeals in the above entitled cause, and that said judgment be reversed, and that petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Respectfully submitted,

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November 9, 1943.